CHAPTER 13
FAILURE TO RULE ON A MOTION and DELAY OF JUDGMENTS
Trial Rules 53.1 and 53.2

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Introduction

Ind. Trial Rule 53.1 and Ind. Trial Rule 53.2 are officially titled "Failure to rule on motion" and "Time for holding issue under advisement; delay of entering a judgment" but are commonly known, but sometimes inaccurately, as the "lazy judge" rules. Trial court clerks perform specific duties under these rules,[1] and there are *important differences in procedures between the two rules.*

Trial Rule 53.1

To invoke the rule, an interested party must file a praecipe specifically designating the motion or decision the court has delayed. Ind. Trial Rule 53.1(E). The trial court clerk's first duty is to enter the date and time of the filing in the clerk's praecipe book. The trial court clerk is also required to record the filing in the chronological case summary (CCS).

The trial court clerk must then determine if the court has delayed ruling beyond the time limitation set in the rule. In determining if a ruling is timely, there are several scenarios to consider and, naturally, exceptions. The general rule provides:

1. The court must either set a motion for hearing or, if no hearing is required, enter a ruling on the motion within thirty (30) days after the filing. Ind. Trial Rule 53.1(A). If the court has acted within the thirty period to schedule a motion for hearing, the actual hearing itself may take place outside the thirty-day window.[2]

2. Once a court holds a hearing on a motion, the court has thirty (30) days to rule of the motion. Id. Allowing parties time to file post-hearing briefs or findings does not automatically extend the court's time to rule.[3]

[1] Under Trial Rule 53.1, " … it is the responsibility of the clerk to make an independent determination of the salient facts…" *Jolly v. Modisett*, 275 N.E.2d 780, 257 Ind. 426 (1971).

[2] *See*, *e.g.*, *State v. Hurst*, 688 N.E.2d 402 (Ind. 1997).

[3] "… the filing of additional briefs does not in itself extend the time period for ruling on a particular matter. *State ex rel. Koppe v. Cass Circuit Court*, 723 N.E.2d 866 (Ind. 2000).

The exceptions to the general rule provide that the time limitation does not apply:

1. during any period after the case is referred to alternative dispute resolution and until a report on the alternative dispute resolution is submitted to the court,

2. when the court within thirty (30) days after filing, orders that the motion be considered during the trial on the merits,

3. when the parties who have appeared or their counsel stipulate or agree **on the record** that the time limitation for ruling on a motion shall not apply or be extended for a designated period of time,

4. the time limitation for ruling has been extended by the Supreme Court,[4]

5. the ruling in question involves a repetitive motion, a motion to reconsider, a motion to correct error, a **petition for post-conviction relief**[5], or a ministerial post-judgment act.

An obvious question presents itself: when is a court deemed to have ruled on or decided a motion? Under Ind. Trial Rule 53.1(C) a court is "…deemed to have ruled or decided at the time the ruling or decision is entered into a public record of the court or at the time the ruling or decision is received in the office of the clerk of the court for filing." A statement from the judge that he has decided how he is going to rule is not sufficient.[6]

"If the Clerk determines that the ruling or decision **has not been delayed**, the Clerk shall notify in writing all parties of record in the proceeding and record this determination in the chronological case summary under the cause." Ind. Trial Rule

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[4] Under Trial Rule 53.1(D), a court may apply to the Supreme Court for an extension of the time limitation. The application must be filed prior to the filing of a praecipe and the application must also be served on the trial court clerk. Withdrawal of submission may not take effect during the pendency of the application before the Supreme Court. If the time limitation expires while the application for extension is before the Supreme Court, the trial judge's jurisdiction over the case is suspended.

[5] "…T.R. 53.1 does not apply to petitions for post-conviction relief." *White v. State*, 793 N.E.2d 1127 (Ind. 2003). Also note, "… a motion to correct erroneous sentence filed pursuant to I.C. 35-38-1-15 must be considered a petition for post-conviction relief exempted from the application of T.R. 53.1." *State ex rel. Gordon v. Vanderburgh Circuit Court*, 616 N.E.2d 8 (Ind. 1993).

[6] "… it should be unnecessary for a party to be required to check the judge's bench docket. The timeliness of the filing of the praecipe should be a matter determinable from the records maintained in the Clerk's office. *Rolf v. Rolf*, 287 N.E.2d 865, 259 Ind. 386 (1972).

53.1(E)(1). Effective January 1, 2007, such a determination **shall not** be filed with the Indiana Supreme Court.

If the trial court clerk determines that the ruling or decision **has been delayed**, "…the Clerk shall give written notice to the judge of the cause and the Supreme Court of Indiana that the submission of the cause has been withdrawn effective as of the time of the filing of the praecipe …"[7] This determination should be recorded in the chronological case summary. Ind. Trial Rule 53.1(E)(2). Effective January 1, 2007, a copy of the praecipe and the chronological case summary must accompany the notice to the Supreme Court. The matter is then in the hands of the Supreme Court.

Trial Rule 53.2

The procedure followed under Ind. Trial Rule 53.2 is very much the same as the procedure followed under Ind. Trial Rule 53.1. However, *there are important differences* between the two rules. Ind. Trial Rule 53.2 applies when a case has been tried to the court and taken under advisement by the judge.

Under Ind. Trial Rule 53.2, if a judge takes a matter tried to the court under advisement and fails to determine any issue of law or fact within **ninety (90) days**; submission of all pending matters and the case may be withdrawn from the judge. Ind. Trial Rule 53.2(A). A court is considered to have a matter "under advisement" once the submission of evidence has concluded. "… [T]he offering of additional briefs, arguments, proposed findings, or other documents that may be helpful to the court but which are not *evidence* do not by themselves effect the time within which a ruling may be required under Ind. Trial Rule 53.2. *State ex rel Koppe v. Cass Circuit Court*. , 723 N.E.2d 866 (Ind. 2000).

As with Ind. Trial Rule 53.1, the first step in invoking Ind. Trial Rule 53.2 is the filing of a praecipe by an interested party. The remainder of the process under Ind. Trial Rule 53.2 mirrors Ind. Trial Rule 53.1, though the exceptions under Ind. Trial Rule 53.2 are more limited. The ninety (90) day time limitation of Ind. Trial Rule 53.2 does not apply where:

1. the parties who have appeared or their counsel stipulate or agree on record that the time limitation for decision shall not apply,

2. the time limitation for decision has been extended by the Supreme Court.

The most obvious, and important, difference between Ind. Trial Rule 53.1 and Ind. Trial Rule 53.2 is that Ind. Trial Rule 53.2 **does apply to petitions for post-conviction**

[7] "A mere copy of the praecipe for such notice [to withdraw submission] will not suffice as substantial compliance …" *Jolly v. Modisett*, 275 N.E.2d 780, 257 Ind. 426 (1971).

relief. Except as noted, Ind. Trial Rule 53.2 specifically refers to and follows the procedures found in Ind. Trial Rule 53.1.

The county attorney can serve as another resource for assistance with the application of this rule.

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